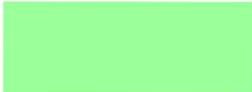




U.S. Citizenship  
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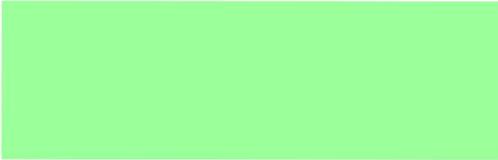


Date: NOV 14 2014 Office: VERMONT SERVICE CENTER File: 

IN RE: Self-Petitioner: 

PETITION: Petition for Immigrant Abused Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,



Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center, (“the director”) denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(A)(iii), as an alien battered or subjected to extreme cruelty by his U.S. citizen spouse.

The director denied the petition because the petitioner failed to establish his entry into the marriage in good faith, that he had a qualifying relationship with his spouse and that he was eligible for immigrant classification, and because the petitioner did not comply with the provisions of section 204(g) of the Act.

On appeal, counsel submits a brief and additional evidence.

#### *Applicable Law*

Section 204(a)(1)(A)(iii)(I) of the Act provides that an alien who is the spouse of a United States citizen may self-petition for immigrant classification if the alien demonstrates that he or she entered into the marriage with the United States citizen spouse in good faith and that during the marriage, the alien or a child of the alien was battered or subjected to extreme cruelty perpetrated by the alien’s spouse. In addition, the alien must show that he or she is eligible to be classified as an immediate relative under section 201(b)(2)(A)(i) of the Act, resided with the abusive spouse, and is a person of good moral character. Section 204(a)(1)(A)(iii)(II) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II).

Section 204(a)(1)(J) of the Act further states, in pertinent part:

In acting on petitions filed under clause (iii) or (iv) of subparagraph (A) . . . or in making determinations under subparagraphs (C) and (D), the [Secretary of Homeland Security] shall consider any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the [Secretary of Homeland Security].

The eligibility requirements for an abused spouse’s self-petition for immigrant classification under section 204(a)(1)(A)(iii) of the Act are further explicated in the regulation at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part:

(ix) *Good faith marriage.* A spousal self-petition cannot be approved if the self-petitioner entered into the marriage to the abuser for the primary purpose of circumventing the immigration laws. A self-petition will not be denied, however, solely because the spouses are not living together and the marriage is no longer viable.

The evidentiary guidelines are further explicated in the regulation at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part:

(i) *General.* Self-petitioners are encouraged to submit primary evidence whenever possible. The Service will consider, however, any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Service.

\* \* \*

(vii) *Good faith marriage.* Evidence of good faith at the time of marriage may include, but is not limited to, proof that one spouse has been listed as the other's spouse on insurance policies, property leases, income tax forms, or bank accounts; and testimony or other evidence regarding courtship, wedding ceremony, shared residence and experiences. Other types of readily available evidence might include the birth certificates of children born to the abuser and the spouse; police, medical, or court documents providing information about the relationship; and affidavits of persons with personal knowledge of the relationship. All credible relevant evidence will be considered.

In addition, the regulations require that to remain eligible for immigrant classification, a self-petitioner must comply with the provisions of section 204(g) of the Act. 8 C.F.R. § 204.2(c)(1)(iv).

Section 204(g) of the Act, 8 U.S.C. § 1154(g), prescribes:

*Restriction on petitions based on marriages entered while in exclusion or deportation proceedings.* – Notwithstanding subsection (a), except as provided in section 245(e)(3), a petition may not be approved to grant an alien immediate relative status or preference status by reason of a marriage which was entered into during the period [in which administrative or judicial proceedings are pending], until the alien has resided outside the United States for a 2-year period beginning after the date of the marriage.

Section 245(e) of the Act, 8 U.S.C. § 1255(e), provides an exception to section 204(g) of the Act as follows:

*Restriction on adjustment of status based on marriages entered while in exclusion or deportation proceedings –*

- (1) Except as provided in paragraph (3), an alien who is seeking to receive an immigrant visa on the basis of a marriage which was entered into during the period described in paragraph (2) may not have the alien's status adjusted under subsection (a).
- (2) The period described in this paragraph is the period during which administrative or judicial proceedings are pending regarding the alien's right to be admitted or remain in the United States.
- (3) Paragraph (1) and section 204(g) shall not apply with respect to a marriage if the alien establishes by clear and convincing evidence to the satisfaction of the [Secretary of

Homeland Security] that the marriage was entered into in good faith and in accordance with the laws of the place where the marriage took place and the marriage was not entered into for the purpose of procuring the alien's admission as an immigrant and no fee or other consideration was given (other than a fee or other consideration to an attorney for assistance in preparation of a lawful petition) for the filing of a petition under section 204(a) . . . with respect to the alien spouse or alien son or daughter. In accordance with the regulations, there shall be only one level of administrative appellate review for each alien under the previous sentence.

The corresponding regulation at 8 C.F.R. § 245.1(c)(8)(v) states, in pertinent part:

*Evidence to establish eligibility for the bona fide marriage exemption.* Section 204(g) of the Act provides that certain visa petitions based upon marriages entered into during deportation, exclusion or related judicial proceedings may be approved only if the petitioner provides clear and convincing evidence that the marriage is bona fide. . . .

#### *Facts and Procedural History*

The petitioner is a citizen of the Dominican Republic who entered the United States on July 17, 2004, as a nonimmigrant visitor. On February 12, 2010, the petitioner was issued a Notice to Appear in removal proceedings for remaining in the United States beyond his period of authorized stay.<sup>1</sup> The petitioner married a U.S. citizen on July [REDACTED] in Pennsylvania. The petitioner filed the instant Form I-360 self-petition on June 3, 2013. The director subsequently issued a Request for Evidence (RFE) of, among other things, the petitioner's good-faith entry into the marriage and that his eligibility for the bona fide marriage exemption. The petitioner, through counsel, responded to the RFE with additional evidence, which the director found insufficient to establish the petitioner's eligibility. The director denied the petition and counsel filed a timely appeal.

The AAO reviews these proceedings *de novo*. A full review of the record, including the brief submitted on appeal, fails to establish the petitioner's eligibility. Counsel's claims and the additional evidence submitted on appeal do not overcome the director's grounds for denial and the appeal will be dismissed for the following reasons.

#### *Entry into the Marriage in Good Faith*

The relevant evidence submitted fails to demonstrate the petitioner's entry into his marriage in good faith. In his affidavit dated May 23, 2013, the petitioner indicated that he met his wife when he moved to Pennsylvania in 2009 and that he was in love with her. The petitioner did not probatively describe how he met his wife, their courtship, wedding ceremony, or any of their shared experiences, apart from the abuse.

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<sup>1</sup> The petitioner remains in removal proceedings before the Philadelphia Immigration Court and his last hearing was scheduled for June 9, 2014.

The petitioner also submitted a letter from [REDACTED] who indicated that the petitioner and his wife were married in [REDACTED], and have been together ever since. She also added that she knows that the petitioner and his wife love each other a lot, but did not explain the basis of her knowledge or what led her to that belief. The petitioner submitted a letter from his wife that was written for the Form I-130 petition she filed on his behalf, in which she stated that they had previously separated but that they missed and loved each other a lot. Neither of the affidavits probatively described the petitioner's intentions in entering the marriage or his feelings for his wife after his marriage. The director correctly concluded that these letters provided no specific information demonstrating that the petitioner married his wife in good faith.

In her psychological evaluation, [REDACTED] a licensed clinical psychologist, stated that a mutual friend introduced the petitioner and his wife and that they were married for four years. The psychological evaluation does not provide any other information regarding the petitioner's intentions when entering into his marriage.

The petitioner submitted court documents, medical bills, utility bills, and a social security letter, all addressed to the petitioner or his wife individually, that reflect the petitioner and his wife's shared address, but do not show any shared accounts or household responsibility, nor do they provide any information about whether the petitioner married his wife in good faith. The petitioner also submitted an unsigned lease and rent receipts listing both the petitioner and his wife; however, this evidence, while providing information about the couple's shared residence, does not offer any insight into the petitioner's intentions in entering into the marriage. He provided a letter from [REDACTED] indicating that his wife changed the name on the account from herself to the petitioner, but the reason for the change is listed as "other" and no other information was provided. The photographs of the petitioner and his wife on a few unspecified occasions are not accompanied by any explanation of their significance and do not shed light on the petitioner's intentions when entering into the marriage. The petitioner submitted evidence of a joint checking account; however, the bank statement does not show any activity or that both he and his wife used the account. This evidence, without probative testimony, is insufficient to establish the petitioner's intentions upon entering into the marriage. In his affidavits, the petitioner did not probatively describe how he met his wife, their courtship, wedding, his intentions in entering into the marriage, or any of their shared experiences in meaningful detail. When viewed in the aggregate, the relevant evidence does not demonstrate, by a preponderance of the evidence, that the petitioner entered into marriage with his wife in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

On appeal, counsel submits additional evidence and asserts that the adjudicator listed each piece of evidence instead of weighing the evidence as a whole, and that the approved Form I-130 alien relative petition filed by the petitioner's spouse as well as the evidence of abuse are sufficient to demonstrate the petitioner's entry into the marriage in good faith. However, the statute and regulations define battery or extreme cruelty and entry into the marriage in good faith differently, and each qualifying factor must be established separately. Additionally, the statutory provisions and benefits procured through sections 204(a)(1)(A)(i) (Form I-130) and 204(a)(1)(A)(iii) (Form I-360) of the Act are not identical. The petitioner's wife was the petitioner in the alien relative petition filed on the petitioner's behalf and bore the burden of proof in the prior Form I-130 adjudication, in which she was required to establish her citizenship and the validity of the marriage. In contrast, in this case, the

petitioner bears the burden of proof to establish that he entered the marriage in good faith. Section 204(a)(1)(A)(iii)(I)(aa); 8 C.F.R. §§ 204.2(c)(1)(i)(H), (ix). As previously discussed, the relevant evidence is insufficient to demonstrate the petitioner's entry into the marriage in good faith. The two additional photographs of the petitioner and his wife submitted on appeal on unspecified occasions are not accompanied by any explanation of their significance and do not shed light on the petitioner's intentions when entering into the marriage. In his letter to his wife that he claims to have written while incarcerated and submitted on appeal, the petitioner indicates that he will be the happiest man when he is next to his wife and that she is the only woman he has given himself to, but he still does not probatively describe how he met his wife, their courtship, wedding ceremony, his intentions in entering into the marriage, or any of their shared experiences. As such, the petitioner has not established that he married his wife in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

#### *Section 204(g) of the Act further Bars Approval*

The director also correctly determined that section 204(g) of the Act bars approval of the petition. Because the petitioner married his wife while he was in removal proceedings and did not remain outside of the United States for two years after their marriage, his self-petition cannot be approved pursuant to section 204(g) of the Act unless he establishes the bona fides of his marriage by clear and convincing evidence pursuant to section 245(e)(3) of the Act. While identical or similar evidence may be submitted to establish a good faith marriage pursuant to section 204(a)(1)(A)(iii)(I)(aa) of the Act and the bona fide marriage exception at section 245(e)(3) of the Act, the latter provision imposes a heightened burden of proof. *Matter of Arthur*, 20 I&N Dec. 475, 478 (BIA 1992). *See also Pritchett v. I.N.S.*, 993 F.2d 80, 85 (5<sup>th</sup> Cir. 1993) (acknowledging "clear and convincing evidence" as an "exacting standard.") To demonstrate eligibility under section 204(a)(1)(A)(iii)(I)(aa) of the Act, the petitioner must establish his good-faith entry into the qualifying relationship by a preponderance of the evidence and any credible evidence shall be considered. Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J); *Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010). However, to be eligible for the bona fide marriage exemption under section 245(e)(3) of the Act, the petitioner must establish his good-faith entry into the marriage by clear and convincing evidence. Section 245(e)(3) of the Act, 8 U.S.C. § 1255(e)(3); 8 C.F.R. § 245.1(c)(9)(v). "Clear and convincing evidence" is a more stringent standard. *Arthur*, 20 I&N Dec. at 478.

As the petitioner failed to establish his good-faith entry into his marriage by a preponderance of the evidence under section 204(a)(1)(A)(iii)(I)(aa) of the Act, he also has not demonstrated the bona fides of his marriage under the heightened standard of proof required by section 245(e)(3) of the Act. Section 204(g) of the Act consequently bars approval of this petition.<sup>2</sup>

#### *Qualifying Relationship and Immediate Relative Classification*

The petitioner has also failed to demonstrate that he had a qualifying relationship with a U.S. citizen and that he is eligible for immediate relative classification based on such a qualifying relationship. Because the petitioner is not exempt from and has not complied with section 204(g) of the Act, he has

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<sup>2</sup> Counsel's appellate brief only discusses the petitioner's good faith entry into his marriage and does not contain any discussion of section 204(g) of the Act.

not demonstrated the requisite qualifying relationship and is ineligible for immediate relative classification, as required by section 204(a)(1)(A)(iii)(II)(cc) of the Act and as explicated in the regulation at 8 C.F.R. § 204.2(c)(1)(iv).

*Conclusion*

On appeal, the petitioner has not demonstrated that he entered into marriage with his wife in good faith. He has also failed to establish his eligibility for the exemption at section 245(e)(3) of the Act and is, therefore, subject to section 204(g) of the Act. Furthermore, the petitioner has not established his qualifying relationship or eligibility for immediate relative classification. He is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

**ORDER:** The appeal is dismissed.